

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
 HARRISBURG DIVISION

3 COMMONWEALTH OF PENNSYLVANIA,) CASE NO.
4 PENNSYLVANIA GAME COMMISSION,) 1:15-CV-01567-CCC
 Plaintiff)
 vs.)
5 THOMAS E. PROCTOR HEIRS TRUST,)
 Defendant)
6 _____)

7 TRANSCRIPT OF ORAL ARGUMENT (VIA TELECONFERENCE)
8 BEFORE THE HONORABLE CHRISTOPHER C. CONNER
9 UNITED STATES CHIEF DISTRICT JUDGE
 1 APRIL 2020 - 1:30 P.M.

10 APPEARANCES:

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25 Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

1 P R O C E E D I N G S

2 THE COURT: This is the time and place for an oral
3 argument on the motion for reconsideration that has been filed
4 by the Proctor Trust in long standing litigation at docket
01:29PM 5 number 12-CV-1567. The court issued a memorandum opinion and
6 order in December.

7 Subsequent to the filing of the court's opinion the
8 Proctor Trust filed a motion for reconsideration, which has
9 been fully briefed, and now is the time for oral argument on
01:30PM 10 that motion for reconsideration. I issued an order with respect
11 to oral argument that requested some specific issues or brought
12 to the attention of counsel specific issues that I would like
13 to have addressed.

14 Let me start with Mr. Stockman as the moving party
01:30PM 15 here. If you would please speak to the act of June 6th, 1887
16 and the issue of whether you have discovered any relevant
17 legislative history, treatise discussions, other interpretive
18 guidance dance concerning the statute. According to my research
19 the statute is cited in only one case, Ellis v. Houseknecht,
01:31PM 20 which is a 1914 Pennsylvania Superior Court decision dealing
21 with past payment timing issues and I think largely irrelevant
22 to our dispute.

23 So I'm not aware of any other informative case law
24 that would help us interpret the language of that statute, and
01:31PM 25 I would like you to speak to how that impacts on the court's

1 opinion, particularly in light of Powell v. Lantzy, which I
2 quoted at page 29 of the opinion indicating that, "One cannot
3 purchase at a tax sale caused by his failure to pay taxes which
4 he owed to state or which he was otherwise legally or morally
01:31PM 5 bound to pay, acquire a better title, or a title adverse to
6 that of other parties to interests."

7 MR. STOCKMAN: Thank you, Your Honor. Wes, this is
8 Paul Stockman. Initially Your Honor's research corresponds
9 precisely with ours, did not find anything to cast any
01:32PM 10 particular light on that statute. We'd agree that does not
11 really aid our interpretive task here today. We believe that
12 that is probably because the Act of June 6th, 1887 is not only
13 unambiguous, but is, as we have noted elsewhere in our papers,
14 was entirely consistent with Pennsylvania common law as it
01:32PM 15 existed before then.

16 We cited Breisch, B-R-E-I-S-C-H, vs. Coxe, C-O-X-E,
17 to the court for the notion that that, the payment of taxes is
18 a duty and a failure to perform it is the fault of the owner.
19 There's also an 1855 Pennsylvania Supreme Court decision, Mayor
01:33PM 20 of Philadelphia vs. Riddle, which is 25 Pennsylvania 259, that
21 reiterates that it's an owner's duty to pay taxes.

22 We believe that this establishes a legal duty on the
23 part of an unseated landowner to pay taxes and prevents that
24 landowner, except in very limited circumstances, from using the
01:33PM 25 landowner's own default to obtain something that the landowner

1 didn't already own. We believe that Powell vs. Lantzy is
2 wholly consistent with that proposition, as Your Honor pointed
3 out, and that Powell indeed specifically stated that the
4 parties in possession of the land where the tax was assessed
5 upon that ground was chargeable with its payment.

01:34PM

6 That's 34 Atlantic Reporter at page 451. Now, in
7 Powell that principle didn't come into play because neither
8 Powell nor Lantzy owned the property at the time of the
9 assessment and so did not breach any duties to pay the
10 defaulted taxes. That duty belonged to Irvin, who was the owner
11 when the taxes were assessed in 1882 or 1883, and Powell, the
12 decision in Powell states that neither had a duty to pay
13 because the whole was subject to a claim for taxes which
14 existed before they acquired title and which neither was under
15 any obligation to the state to pay.

01:34PM

16 Now, Your Honor also asked about what effect Herder
17 Spring had on this principle, and, to be direct, Herder Spring
18 is not at all inconsistent with the principle that Your Honor
19 just cited a moment ago. Initially Herder Spring never
20 discusses the statute or the broader principle that one can't
21 benefit from one's own default, and I have gone back and looked
22 through the record in Herder Spring and I see no indication
23 that either the statute or the concept were ever brought to the
24 court's attention.

01:35PM

01:35PM

25 That's not surprising, Your Honor, because there the

1 tax sale purchaser was an unrelated third party who would make
2 the bona fide purchase, so were is no circumstances under which
3 that purchaser could have violated some preexisting duty to pay
4 the defaulted taxes.

01:36PM 5 THE COURT: Right. Of course.

6 MR. STOCKMAN: Now, I think there is some passing
7 language in both Powell and in Herder Spring, but we would
8 submit that the court has to be careful not to read too much
9 into that. I mean for example both cases state in passing that
01:36PM 10 the owner of the unseated land was not personally responsible
11 for the payment of the taxes and they were imposed on the land
12 itself, but that doesn't mean that no one has the duty to pay.
13 I think --

14 THE COURT: But you're making the distinction between
01:36PM 15 some sort of contractual or statutory duty to pay and personal
16 liability, those two different concepts, correct?

17 MR. STOCKMAN: That's exactly right, Your Honor, and
18 that I would refer the court to the preeminent treatise at the
19 time, which is *Black On Tax Titles* and we cited that in our
01:37PM 20 reply brief at pages 6 to 7, and *Black* simply makes clear that
21 saying that the land itself was liable is a shorthand way to
22 refer to the principle, as Your Honor just said, that this tax
23 can only be recovered by condemning and selling the property,
24 and conversely that unseated taxes couldn't be collected by
01:37PM 25 pursuers of personal assets of the owner, and in that respect

1 it was distinct from seated land taxes, where the owner was
2 personally liable and where tax authorities could and did
3 proceed *in personam*. Because obviously Josiah Haines Warrant
4 couldn't physically rip itself out of the surface of the earth
01:37PM 5 and stroll down to Towanda to pay these taxes.

6 Also in this regard, Your Honor, I would like to
7 caution the court to read too much into the decision or into
8 the quotation from Coxe vs. Gibson, C-O-X-E, that there is
9 nothing to prevent the holder of an expected title from
01:38PM 10 purchasing a better one at a tax sale. There are a couple of
11 reasons why that statement can't be taken out of context.

12 THE COURT: Number one doesn't that also, doesn't that
13 also predate the statute?

14 MR. STOCKMAN: It certainly predates the statute, Your
01:38PM 15 Honor, and also if we go back to the first principle, the
16 notion that one cannot profit from his or her own wrongdoing as
17 an equitable principle, and in Coxe and in the Reinboth vs.

18 Zerbe Run Improvement case, and Wes, that's R-E-I-N-B-O-T-H and
19 Z-E-R-B-E, Run, in those cases the equity granted in favor of

01:39PM 20 the tax purchaser based on those particular circumstances, Coxe
21 vs. Gibson in particular was the culmination of a whole series
22 of cases involving a fraudulent scheme, and the tax sale and
23 purchase at issue in Coxe vs. Gibson was undertaken on behalf
24 of a subsequent owner who was not a party to the fraud but

01:39PM 25 whose title because of the fraud was seriously clouded. That

1 owner wanted to be able to convey good title in a subsequent
2 bona fide sale and so defaulted on the property there, and in
3 Reinboth similarly there were competing claims against the
4 property that the tax sale purchaser was trying to clear.

01:39PM 5 Your Honor in fact recognized it at page 32 of your
6 opinion that these cases don't mirror the circumstance here,
7 and there's nothing in either case that stands for the
8 proposition that a landowner such as CPLC could use its own
9 default to acquire an entirely different tract of land to which
01:40PM 10 it otherwise didn't have any legitimate claim and dispossessing
11 an owner who otherwise complied with the law, and in fact going
12 back to my favorite treatise, *Black On Tax Title*, *Black* makes
13 it clear reading this context of the rest of Pennsylvania's
14 jurisprudence that Gibson needs only that a claimant with
01:40PM 15 voidable or radically defective title can purchase the land.
16 That's Section 274 of *Black's* treatise.

17 And I think that it sort of highlights the caution
18 in, you know, in relying on some of these cases that goes
19 through a hundred or more years of precedent kind of picking
01:41PM 20 out sound bites cafeteria style, particularly in an area of law
21 that is complex and often as inconsistent as this is.

22 The last thing I would like to say on this subject,
23 Your Honor, is of course that we shouldn't overlook the fact
24 that here CPLC not only had a legal duty to pay the tax, but
01:41PM 25 they also had a contractual duty to do so by virtue of the deed

1 that they accepted from Union Tanning, and you can find that
2 reference at page 64 of ECF number 97-1.

3 THE COURT: Okay. All right. I would like you to
4 pivot for me a bit and let's talk, I'll ask you to speak on
01:41PM 5 that evidence and the importance of the evidence of what was
6 sold at the 1908 tax sale. You proffered various after the
7 fact evidence that the only, that only the surface estate was
8 assessed and sold at the 1908 tax sale, and your evidence
9 includes the specific reference to the Proctor and Hill
01:42PM 10 assessment in the deed to the Game Commission later in the
11 negotiations with McCauley to acquire subsurface estate in
12 Bradford County following tax sales, and an exception in the
13 Game Commission's deed for a railroad right of way to access
14 Proctor and Hill mines.

01:42PM 15 My question for you is what makes this evidence
16 legally relevant to the 1907 assessment and the 1908 tax sale?
17 In other words, couldn't this evidence exist and yet still have
18 no legal significance if the 1908 tax sale in fact washed the
19 title and rejoined the previously severed estate?

01:43PM 20 MR. STOCKMAN: Your Honor, I have a two-part answer to
21 that question. The first part of my answer would be to cite to
22 the Jedlicka vs. Clemmer case. That's J-E-D-L-I-C-K-A, v.
23 Clemmer, C-L-E-M-M-E-R, and that states that, "All acts and
24 declarations of the owner of land made during the continuation
01:43PM 25 of his interest tending to show the character or extent of his

1 possessions or interest are of competent evidence," and I
2 believe in this case that is certainly the case and more
3 broadly any circumstantial evidence reflecting the
4 understanding of the actual parties to the transaction
01:43PM 5 certainly is competent evidence to shed light of what actually
6 was assessed and sold.

7 Now, to be perfectly candid, Your Honor, if that was
8 the only evidence we had I think this would be a much more
9 challenging case, but I think we are fortunate in this respect
01:44PM 10 that there is plenty of additional evidence showing that Union
11 Tanning and Central Pennsylvania Lumber Company both reported
12 their interest in paid taxes and that Proctor and Hill did as
13 well, and Your Honor pointed out in the footnote to your most
14 recent order there's also no, there's nothing to suggest that
01:44PM 15 they did not do so properly, and some of the evidence we
16 compiled and submitted to Kate earlier I guess late last week,
17 and we can start with the assessment record from Bradford
18 County, you know, an exhibit which was what we compiled as
19 Exhibit C.

01:45PM 20 The ECF headers on these pages are microscopic, but
21 essentially the first page, which is page 8 of ECF 99-1 shows
22 Proctor and Hill paying taxes in 1893 on a variety of land.
23 Moving to the second page, the second and third pages, which
24 are pages 11 and 12 of ECF 100-1, those are taxes for 1898
01:45PM 25 shows Union Tanning paying taxes on a number of properties and

1 Proctor and Hill making similar payments for other properties.

2 So Proctor and Hill were certainly complying with the
3 law there. Their ownership interest at that point in those
4 properties was certainly well known to Bradford County
01:46PM 5 officials, and incidentally there's nothing to suggest that
6 that their retained holdings were not otherwise known to the
7 assessor.

8 Going to the fourth page of Exhibit C, which is page
9 19 of ECF 100-1, there one could see Union Tanning paying taxes
01:46PM 10 and J.A. Hill paying taxes, and what's interesting there is
11 Your Honor may recall the starting by virtue of the Act of 1897
12 that we cited in our papers the assessors were required to list
13 the owners, if known, and if Your Honor looks in the column
14 titled *Township* in the left margin of that column the court can
01:47PM 15 see pencil notations showing either P and H or UTCO for Union
16 Tanning.

17 And then of course the last page of Exhibit C, which
18 is for 1906, then goes on to show that Central Pennsylvania
19 Lumber Company pays taxes and is listed in the township column
01:47PM 20 as the owner. So that's the first principle. And then there
21 was, there is also in addition to the post hoc evidence from
22 the late teens and twenties there's other circumstantial
23 evidence showing that in fact the Proctor and Hill subsurface
24 interest was recorded and known to the assessors. Starting
01:48PM 25 with what we compiled as Exhibit D, those reflect that where

1 there were properties that were the subject of acts of
2 production in Bradford County, they were separately assessed
3 as seated land. And we've also shown the court the
4 circumstantial evidence showing how severed subsurface
01:48PM 5 interests were separately taxed in Lycoming County.

6 Like for example that's Exhibit E. The first, the
7 second page of Exhibit E for example, the fourth line down
8 lists warrant number 419 as 289 acres which is the William
9 Chancellor warrant, owner listed as CPL Co., Central
01:49PM 10 Pennsylvania Lumber Company.

11 If you go to the next to last page of that exhibit
12 there's a statement, "The following tracts of land assessed to
13 the undersigned as owners of all coal, etc., including oil and
14 gas," and the first one there is the William Chancellor warrant
01:49PM 15 419, 289 acres, and it lists the Proctor heirs and it
16 specifically references the deed book by volume and page that
17 contains that reference.

18 Admittedly this is a different county, but we believe
19 that it's still competent evidence of Proctor's and Central
01:49PM 20 Pennsylvania Lumber Company's essential business practices, I
21 think it's also --

22 THE COURT: I think I understand that argument. Let
23 me, let's get to, you know, sort of the heart of your argument
24 that if CPLC properly reported its surface interest, there is
01:50PM 25 no possible way that the 1908 tax sale could have included your

1 subsurface estate. But isn't it also true you never reported
2 your, or there's no evidence that you reported your severed
3 subsurface ownership which never, you never had it separately
4 assessed, you paid separate taxes on it. Isn't it reasonable
01:50PM 5 that Bradford County could have concluded that the entire
6 warrant was to be assessed and sold from 1907 taxes?

7 MR. STOCKMAN: Okay, I'm going to try and break that
8 out, Your Honor, because I think there are three separate
9 things that I'd like to discuss in that context, and the first
01:51PM 10 is respectfully I would like to take issue with the concept
11 that Proctors did not report their interest. I think the
12 evidence that we cited that I just discussed shows that the
13 Proctor family did so, and Proctor and Hill in this case.

14 There's correspondence showing the Proctors, you
01:51PM 15 know, reaching out to officials to obtain tax payments, and
16 there's also another part, Your Honor, showing how the Hill
17 family who lived in Towanda acted as intermediaries in that
18 respect. So then moving from that proposition, once there is a
19 proper recording in CPLC's deed page of their partial ownership
01:52PM 20 in these warrants, of its surface only ownership, the law is
21 clear. Herder Spring says under those circumstances that there
22 has to be separate inspection of the surface and subsurface.

23 Herder Spring at 143 Atlantic 3rd at 364 quotes
24 Wilson for the proposition that where there is divided
01:52PM 25 ownership of the land, there ought to be a divided taxation.

1 It goes on at page 372 to say, "If neither the tellers nor the
2 purchaser of the surface rights in 1899 reported the transfer,
3 then the Centre County commissioners would have assessed and
4 taxed the owners in the warrant in its entirety." We
01:52PM 5 unequivocally stated in Hess, which is Hess vs. Gephard, that
6 the tax system relating to unseated land including the Acts of
7 1806 and 1815, treated unseated land entirely in reference to
8 the original warrant when not otherwise directed by the owner.

9 Here of course we believe that there's ample evidence
01:53PM 10 that the assessors were otherwise directed by the owners. That
11 rule has been applied in other cases as well. I'd refer to
12 court to Sanderson vs. City of Scranton, which is 105 PA 469
13 from 1888. Also City of Reading vs. Finney, 73 PA 467 472, and
14 of course under Herder Spring there is the presumption that
01:53PM 15 that the assessors in conducting their assessment did so
16 rightly, rightly done. That's 143 Atlanta 3rd at 365. Again
17 that's consistent with prior Pennsylvania law.

18 And I have two additional citations there. The first
19 is Beacom, B-E-A-C-O-M, vs. Robison, 43 Atlantic 2nd 640, which
01:54PM 20 is a Superior Court case from 1945, and McCoy vs. Michew,
21 M-I-C-H-E-W, which is 7 Watson Sergeant 386, a Supreme Court
22 case from 1844. And in fact if the assessors had intended to
23 assess the Josiah Haines warrant as a whole, even those there
24 has been reports identifying that it had been separated into
01:54PM 25 surface and subsurface interests, the assessment in fact would

1 have been void and the tax sale would have been null on that
2 ground, and in that respect I would like to cite Your Honor to
3 Fisk vs. Corey, C-O-R-E-Y, 21 Atlantic 594, which is a
4 Pennsylvania Supreme Court case from 1891, and McCormick vs.
01:55PM 5 Berkey, B-E-R-K-E-Y, which is a Supreme Court case from 1913
6 reported at 86 Atlantic 97.

7 There are other cases as well. In that regard the
8 fact that there is no separate subsurface assessment of the
9 Josiah Haines warrant is as a matter of law irrelevant. Under
01:55PM 10 the law that prevailed at the time subsurface estates could
11 only be assessed if there was actual production on the property
12 that would form a basis for valuing the property.

13 That's the Rockwell case that the parties have
14 discussed at length in their, in their papers. And in these
01:56PM 15 cases where the properties have value it was assessed either on
16 the seated list or, as in Lycoming County, as a separate
17 minerals only assessment. And I think what is interesting in
18 that respect is in that case the court found surface assessment
19 did not have any special notation or indication that this was a
01:56PM 20 surface only assessment.

21 Referring back to Exhibit E, we talked about the
22 William Chancellor warrant where there was a separate minerals
23 assessment, but if Your Honor goes to the surface assessment on
24 page 2 of Exhibit E, which is page 10 of ECF 131-1, the William
01:57PM 25 Chancellor warrant appears there with Central Pennsylvania

1 Lumber listed as the owner with nothing to indicate that it was
2 a surface only assessment even though that could have been only
3 the case under the circumstances given that there was a
4 separate minerals assessment.

01:57PM 5 (Brief pause.)

6 THE COURT: Okay. I don't have any other questions or
7 concerns at this time, but I may in the event that something
8 comes up during your opponent's argument, and I would like to
9 ask Mr. Bechtel to weigh in on the issues that I discussed with
01:57PM 10 you, in particular does he have any relevant legislative
11 history treatise, discussion, or other interpretive guidance
12 regarding the Act of June 6th, 1887, and I mentioned previously
13 that that in particular seems to be a bit of a game changer in
14 terms of the obligation of -- strike that, I don't mean
01:58PM 15 obligation, I mean the redemption only argument that has been
16 raised by the Proctor trust, and Mr. Bechtel, maybe you can
17 speak to that.

18 MR. BECHTEL: Well, Your Honor, this is Brad Bechtel.
19 I have read the Act of June 6th, 1887. I can't say that I have
01:58PM 20 anything that interprets it. It seems a pretty simple act that
21 says the owner or owners have an obligation to pay taxes or the
22 property gets charged and sold. I'm not sure why that has
23 anything to do with the redemption argument to the owners, but
24 it talks about it and the owner or owners in 1907 were Union
01:59PM 25 Tanning, Central Pennsylvania Lumber, and the Proctors. A lot

1 of this seems to forget for some reason when we talk about
2 Central Pennsylvania lumber the Proctors are an owner also.

3 I mean when we talk -- well, I'll try not to jump
4 ahead, but just looking at that, you know, Powell vs. Lantzy,
01:59PM 5 these are separate estates, each estate, including Union
6 Tanning, has an estate at that time, and any one of them could
7 have paid the tax. This assessment is in fact, all the
8 wonderful arguments aside, the assessment, which is the most
9 competent evidence from the time of what was assessed says it's
01:59PM 10 an unseated Josiah Haines warrant.

11 Other warrants could be different. Some could be
12 seated. Some could be separated and assessed separately. Some
13 in other counties could be separated and assessed differently.
14 The warrant we're looking at is Josiah Haines. There's a
02:00PM 15 reservation, yes, because every warrant is different, as Judge
16 Schwab knew, as the plaintiff's counsel knows, that some
17 warrants aren't in this litigation. That's because Proctors
18 owned some warrants, and they weren't lost at tax sale.

19 So those warrants subject to would operate
02:00PM 20 differently. To put all this together and say oh, it's all or
21 one when it's in my favor but they're all separate when it's
22 not ignore the realities. And what was reported, I mean
23 Proctor bought this property at one point. They say Proctor
24 reported something. We don't know what reporting means.

02:01PM 25 Doesn't say it has to be in writing. Doesn't say it has to be

1 in oral. Could be at the tavern, could be popular
2 understanding, we don't really know, but the fact of the matter
3 is there's an assessment, again the best competent evidence,
4 there's an assessment for an unseated warrant as a whole.

02:01PM 5 THE COURT: I'm sorry, Mr. Bechtel, can I interrupt
6 you for a second?

7 MR. BECHTEL: Oh, you may.

8 THE COURT: I'm not sure that I'm seeing the actual
9 assessment and I'm not aware that anyone has directly pointed
02:01PM 10 to it. I know both parties have talked about it ad nauseam.
11 I'm not sure I have seen the assessment itself that you're
12 referring.

13 MR. BECHTEL: I believe any assessment within the --
14 I mean, Mr. Stockman just talked about it, Exhibit B perhaps,
02:02PM 15 looked at the assessment books. He actually looked at the
16 pencil notations to the side.

17 THE COURT: Well, I'm wondering what you're referring
18 to as the assessment. Just get --

19 MR. BECHTEL: The assessment books and those are the
02:02PM 20 assessments. I believe -- I believe, I mean they're in the
21 prior record. I believe they're in this record. I can't
22 easily open up his e-mail to see which exhibit it was, and I
23 don't have a printer here, so I can't print any of them, but I
24 believe they were, there's an exhibit and it shows the
02:02PM 25 assessment record and it says taxes paid by who, and I would

1 suggest that for presenting the assessor did this properly, he
2 did exactly what he said. He listed who paid the taxes, not
3 who owned the property or owner or reputed owner or who owned
4 the surface or who owned the subsurface. He told you who paid
02:03PM 5 the taxes, because that's what it says.

6 And on the left had said it'll say Josiah Haines,
7 it's an unseated list, Josiah Haines warrant. It doesn't say
8 Josiah Haines surface. It doesn't say Josiah Haines
9 subsurface. It doesn't say Josiah Haines tan bark. It says
02:03PM 10 Josiah Haines unseated. There's no evidence that anybody told
11 anybody to do anything, but if they did, it started with the
12 Proctor.

13 When Union Tanning bought the property what did Union
14 Tanning tell the assessor. Did they perhaps say we bought
02:03PM 15 Proctor's interest? When CPLC bought the property did they
16 perhaps say oh, we bought Union Tanning's interest? Is the
17 assessor not looking at the property and saying huh, is this
18 seated or unseated? I don't know, looks unseated to me,
19 there's no permanent occupancy, which in fact there isn't, has
02:04PM 20 never been on this warrant, and he just said oh, I'm going to
21 tax it as unseated.

22 And for what it's worth, all this evidence that they
23 show that the Proctors routinely by business did these things,
24 yeah, until they didn't want to. I mean, we've heard Paul's
02:04PM 25 story about these people and their businesses, and I haven't

1 told the story of the robber barons. It's actually not
2 relevant at this point. This is a motion for summary judgment,
3 take it as true, any you can recover. We are on
4 reconsideration. You've already made a decision, so we're
02:04PM 5 looking back saying oh, is that right or not, and I would
6 suggest that -- how do I want to say this?

7 If the facts come in for each and every parcel we can
8 talk about them, but they're just going to be argument. You've
9 seen all the facts. The facts are the facts. The relevant
02:05PM 10 isn't relevant. There was an unseated assessment. We know
11 that. It did not separate it. It was not challenged while
12 Proctor was an owner. It was not challenged while Union
13 Tanning was an owner. It was not challenged while Central
14 Pennsylvania Lumber Company was an owner.

02:05PM 15 The mine, we don't even know if those mines existed,
16 and the letters that were attached as an exhibit that show oh,
17 look, there was, I think they said there were negotiations
18 about opening mines. Those letters are never answered. I
19 mean, I can't tell you how many times I get letters from people
02:05PM 20 who claim to own property that the Commonwealth owns. Do I
21 always answer them? No. I mean, sometimes you get tired of
22 answering them, too.

23 Wouldn't it be interesting to see what the answer was
24 to that letter, or if there was an answer at all? So when we
02:06PM 25 say oh, look, we obviously know, we don't know these things.

1 All we know is what the assessors told us, which is this is an
2 unseated parcel, we're selling it for taxes. Nobody challenged
3 it. Here's where it went. And Powell vs. Lantzy, I get it,
4 there's a phrase in there about wrongdoing. Who says it's
02:06PM 5 wrongdoing?

6 I mean, a duty with no consequence is no duty at all.
7 A duty shared by everybody is not a duty. I mean, the owner or
8 owners shall pay the taxes. Powell vs. Lantzy speaks exactly
9 to that situation. There's two different ownerships,
02:06PM 10 subsurface, surface, in this case even Tan Bark. Any one of
11 them could have paid those taxes to protect their interests,
12 any seated property, but not any one of them could have claimed
13 for any of that money back.

14 In this case all these guys looked at this 1907 and
02:07PM 15 they played bluff, who's going to pay first. Nobody paid. The
16 property went to sale. Dawes and McCauley Junior bought it. We
17 can argue how and when he became an agent, if he became an
18 agent. Maybe he became after agent after he did his job. He
19 was a real estate broker or agent or something, he became an
02:07PM 20 attorney. Who knows? Might have been a smart move on the part
21 of Central Pennsylvania Lumber to give him a job. They figured
22 he bought this property. We don't know.

23 It is irrelevant. They are not the same estate.
24 They don't owe a duty to the Proctors to buy this back. They
02:07PM 25 don't owe a duty to the state to buy this back. They in fact

1 have law that tells them that they can let it go to tax sale
2 and buy it to clear the title. As we know, Union Tanning,
3 they're not going to pay the taxes. They just strip bark from
4 the same, so what do they want it for? So everybody played
02:08PM 5 bluff. Somebody bought it in. Nobody complained. A hundred
6 and forty years later now someone's saying well, we didn't
7 really have to do anything. We could just sit on it. We want
8 to up end, and here we keep saying all is said very well, this
9 isn't in accordance with the law.

02:08PM 10 Well, in fact if you look at the Pennsylvania law,
11 Herder Spring, Cornwall, Keta, you get down to this principle
12 has been upheld for a hundred and something years. This is a
13 little longer than that. There is not a new principle.
14 Everyone knows the second or whatever it is in June, second
02:08PM 15 Tuesday in June every two years you're having a tax sale.

16 I dare say Proctor and Hill bought property at tax
17 sale. They all know. They chose not to go for whatever
18 reason. Probably because it wasn't valuable. And when it was
19 like in Lycoming, when it was like with an active mine, they
02:09PM 20 took care of it. And when it wasn't, they didn't pay
21 attention. And the consequence of that they didn't pay their
22 taxes any more than anybody else does, the unseated warrant got
23 sold.

24 I guess that's where I look at the Act of 1887 and I
02:09PM 25 think it tells me exactly what I know. I mean, it tells me

1 what I understand. Why we're saying it creates something I'm
2 not sure. That's just what you do. And when we say oh, well,
3 look at this second issue and how CPLC is profiting from
4 wrongdoing, I'm saying it's not wrongdoing. It's not immoral.
02:10PM 5 It's a legal mechanism that the Commonwealth set up to clear
6 title for unseated warrants because they wanted people to start
7 paying taxes on them.

8 The whole reason of 1805, 1815, 1885, the whole
9 reason for these laws were people were trading these properties
02:10PM 10 like stock in large cities and not paying their taxes, and they
11 didn't know who they were and they wanted to find them and they
12 wanted to get them into the hands of people who would develop
13 the properties, make them seated, and pay taxes. And in order
14 to do that they had to get clear title, because these stocks
02:10PM 15 were being traded, these properties were being traded, and
16 they're being split up all over the place and how in the world
17 is anybody going to invest money and do this if they could
18 possibly lose it a hundred and forty years later. That just
19 doesn't seem right.

02:10PM 20 THE COURT: I'm sorry, Mr. Bechtel, let me just
21 interrupt you. Isn't it true that under Powell it is not a
22 legal mechanism if in fact CPLC defaulted on its taxes and
23 caused the tax sale?

24 MR. BECHTEL: I would disagree. If you say CPLC
02:11PM 25 defaulted, did not the owner or owners default? And are not

1 Union Tanning, CPLC, and Proctor and Hill owner or owners?
2 They're all owners. And not joint owners. Not joint tenants.
3 They're all owners. If they didn't pay the taxes it went to
4 sale, and the other cases we've discussed have told us you can
02:11PM 5 as one of those people buy that property from sale, just like
6 anybody else.

7 It's not illegal. It's not immoral. It's a
8 consequence. You're told pay your taxes or we're going to sell
9 it. All of them were told, not just Central Pennsylvania
02:12PM 10 Lumber. That law, 1887, it says owner or owners. It's
11 anticipated there's going to be more than one owner. Any of
12 the owners can pay the tax. Powell anticipates that, because
13 any of them can pay it, and they can't seek contributions
14 after.

02:12PM 15 Right, I mean, that's been the law. I don't know
16 exactly how else to say that. I mean, I've grown up with this,
17 I've heard it, and this is how it's been interpreted, how it's
18 been interpreted in Herder Spring, how it's been interpreted in
19 Cornwall, how it's been interpreted in Keta. We're turning it
02:13PM 20 on its head when we try to say oh, well, somebody individually
21 has a duty.

22 THE COURT: I understand your argument, Mr. Bechtel.
23 Proctor Trust is saying you can't get a better title, you being
24 CPLC, assuming McCauley is the agent, and you can't create a
02:13PM 25 better title by default and you're saying the default wasn't

1 just you defaulted or the agents defaulted or the prior owners
2 defaulted. It was all the prior owners defaulted. I
3 understand your argument.

4 MR. BECHTEL: Right.

02:13PM 5 THE COURT: Okay.

6 MR. BECHTEL: Right.

7 THE COURT: Well, a very interesting case, interesting
8 circumstances, and a very interesting procedural posture now
9 that we are on reconsideration. I have, I have some things
02:13PM 10 that I'll need to research search a bit further. I'm going to
11 allow Mr. Armstrong to present the transcript to the parties
12 for purposes of adding to any additional arguments that you've
13 made orally.

14 If there are particular cases that you believe you
02:14PM 15 want to bring to my attention before, before I begin to write
16 on the motion for reconsideration, please do so within ten days
17 of your receipt of the transcript. Is there anything else the
18 parties would like to present on the record before we go off
19 the record?

02:14PM 20 MR. STOCKMAN: Your Honor, this is Paul Stockman. If
21 I might respond very briefly to a couple of the things that my
22 counterpart said?

23 THE COURT: I'll allow that. But, Mr. Bechtel, I'm
24 going to give you the final word. And do the parties want the
02:14PM 25 exhibits admitted into the record? The exhibits that were

1 attached I believe to, I have the docket in front of me and
2 it's daunting to determine which exhibits were already part of
3 the record and which may have just been presented recently.

4 MR. STOCKMAN: Your Honor, this is Paul Stockman.

02:15PM 5 Of the Exhibits A through H that we presented, all are in the
6 record except Exhibit H, which is an excerpt of two newspaper
7 accounts, and Exhibit B, which is some additional assessment
8 records that we came across after briefing was complete on this
9 motion.

02:15PM 10 I believe both would be subject to judicial notice
11 and we can certainly present the request for judicial notice to
12 the court in that respect and also direct the court to where in
13 the record the specific exhibits are to the extent they're in
14 the record. Would that be the court's preferred way to
02:16PM 15 proceed, or would the court prefer just to submit everything at
16 once?

17 THE COURT: Well, let me first find out if Mr. Bechtel
18 has any objection considering that this is simply going, there
19 are a lot of issues to the weight of any of this evidence.

02:16PM 20 But, Mr. Bechtel, do you have any objections with respect to
21 the admissibility of any of these matters for the purposes of
22 the court's ruling on the motion for reconsideration?

23 MR. BECHTEL: This is Brad Bechtel. I appreciate, Your
24 Honor, subject to the argument as to the weight of the
02:16PM 25 information, I have no objection to you seeing them or having

1 them for consideration on this particular motion for
2 reconsideration.

3 THE COURT: Okay. Then they are admitted and the
4 court will determine the significance or relevance of the
02:17PM 5 materials presented that were not previously provided to the
6 court, and I'll make that clear in terms of any decision that's
7 rendered. All right, Mr. Stockman, you have my attention. You
8 may speak in rebuttal.

9 MR. STOCKMAN: Okay. Thank you, Your Honor. I will
02:17PM 10 do my best to minimally occupy your remaining time. I would
11 like to start with the generalized observation that with all
12 due respect to my colleague, a lot of what we heard was
13 speculation. Speculation about what the legislature intended,
14 speculation about what the owners intended. Everybody played
02:17PM 15 bluff. People chose not to go.

16 There was a suspicion that, that the Proctors
17 reported their subsurface interest selectively, and I would
18 submit to Your Honor that that's speculation, certainly is not
19 sufficient to entitle the Game Commission to a judgment in its
02:18PM 20 favor.

21 Taking the issue of selective reporting, I think the
22 McIntyre Township assessment puts a lie to that supposition.
23 What that reflects is first of all the McIntyre Township
24 assessment reflects reporting made to Lycoming County, because
02:18PM 25 the reporting under the Act of 1806 is made purely on a county

1 level, and the county then transmitted that information to
2 township. And so what the McIntyre Township assessments show
3 is that the Proctors took their deed showing the reserve
4 subsurface interest to the county commissioners, and in order
02:19PM 5 for there to be selective reporting, that would have to assume
6 that the county commissioners looked at the list of dozens of
7 separate tracts and said well, we're going to pass up the
8 opportunity to tax these and we're only going to write down
9 these two, which is not an inference that comports with what we
02:19PM 10 would expect tax authority to do when presented with a list of
11 properties for potential assessment and taxation.

12 The second point I'd like to make is when Mr. Bechtel
13 says the owners defaulted, including CPLC, Union Tanning as the
14 holder of bark rights, and the Proctor and Hill interest as the
02:19PM 15 subsurface owners, that overlooks the fact that under Herder
16 Spring and Wilson and Sanderson and the other cases we've cited
17 to Your Honor, that once separate interests in a property are
18 reported and whether it's surface or subsurface, or whether a
19 property's and seat was subdivided down the middle half and
02:20PM 20 half, once there is that reporting they are separate estates
21 for tax purposes and the assessors are obligated to assess them
22 separately.

23 So it essentially begs the question that the owners
24 defaulted, that because these interests were reported Central
02:20PM 25 Pennsylvania Lumber Company alone had the obligation to pay

1 taxes on its separate surface interest. The next point I would
2 like to make is Mr. Bechtel, talking about what kind of
3 reporting was made, he said well, maybe Union Tanning said we
4 bought Proctor's interest or CPLC said we bought Union
02:21PM 5 Tanning's interest. I think that's the issue that Your Honor
6 has already grappled with.

7 If that's the case, then those entities failed to
8 comply with the Act of 1806 because they didn't accurately
9 report the unseated lands to which they became a holder, and
02:21PM 10 when they inaccurately reported the sale to comply with the Act
11 of 1806 that default, in addition to the default on paying
12 taxes, further prevents them from using that breach to improve
13 their title and to effectively seize someone else's property.

14 The last comment I'll make very briefly is that in
02:21PM 15 Powell, the reason that Powell and Lantzy did not have an
16 obligation to pay each other's taxes was because there was a
17 cotenancy situation. With all of that I'm going to stop
18 talking.

19 I thank you for the opportunity to talk about these
02:22PM 20 issues and we especially appreciate Your Honor letting us know
21 what specific issues were on your mind. It's a rare and
22 wonderful thing to know what the court is thinking before you
23 walk into court. Thank you, Your Honor.

24 THE COURT: All right. Thank you, Mr. Stockman,
02:22PM 25 Mr. Bechtel, I'm happy to hear from you, and you have the last

1 word.

2 MR. BECHTEL: Thank you, Your Honor. This is Brad
3 Bechtel. I will endeavor to be likewise brief. I'd just like
4 to say I don't believe that a lot of what I said was
02:22PM 5 speculation as much as description, and that's really what
6 we're dealing with.

7 We have a certain set of facts and we have attorneys
8 describe them in the way that is preferable for our client.
9 There was a statement that McIntyre Township puts the lie to
02:23PM 10 the fact that there was no reporting. I would suggest it's the
11 opposite. Bradford County's assessment that don't include
12 separate assessment puts the lie to the idea that they always
13 did it this way.

14 I would like to go to Herder Spring is because there
02:23PM 15 was reported, there's no real evidence that anything was
16 reported to Bradford County, because Bradford County assessed
17 this property as an unseated Josiah Haines as a whole. There's
18 nothing showing, no letters, nothing.

19 And Herder Spring said once there's a severance it
02:23PM 20 ought to be reported. I don't believe it said it had to be. In
21 fact, it wasn't. It's nice that we say what ought to be or
22 what should have been. We're looking at the fact one hundred
23 forty years ago of what did happen, and what did happen was
24 that Josiah Haines was assessed as a whole.

02:24PM 25 Let me just bring it up to ask, if Proctor and Hill

1 had paid the taxes in 1907 would it only have been on their
2 subsurface estate? Of course not. The warrant wouldn't have
3 gone to tax sale. The whole warrant. If Union Tanning had
4 paid the taxes in 1907, if they had come in and paid them,
02:24PM 5 would it only have been the bark rights that didn't get sold?
6 Of course not.

7 The whole warrant would not have been sold. Likewise
8 when no one pays the taxes it's not just a piece of the warrant
9 that's sold. It's the whole warrant that's sold. The logic,
02:24PM 10 it's there. This is how it was assessed. Therefore that's how
11 it has to be sold. And how is it inaccurate, how would it be
12 inaccurate for Central Pennsylvania Lumber to say we bought
13 what Union Tanning had?

14 That's not inaccurate. Maybe that's not the way
02:25PM 15 Mr. Stockman would like it to be reported, but it's not
16 inaccurate, and it could very well be we still don't know how
17 Proctor and Hill reported it and what they told somebody. So
18 for us to sit and say well, this is what did or didn't happen
19 and therefore it must be wrong or it must be right, that's
02:25PM 20 truly speculation.

21 All we know is this is what was reported. Josiah
22 Haines unseated, here's the assessment, pay the taxes. You
23 don't pay it, it goes to sale. All right, I won't belabor
24 that. I appreciate your time, Your Honor.

02:25PM 25 THE COURT: Thank you, Mr. Bechtel. I appreciate the

1 information that both parties have supplied both in writing and
2 today orally. I did want to address one additional matter
3 before we go off the record, and I hope that this is clear, but
4 I was a bit concerned with some of the language I heard in the,
02:26PM 5 or read in the briefing regarding the factual statements that
6 were made in the court's December opinion.

7 In fact there was I think in the Proctor Trust
8 memoranda assertions that the court conclusively found, an let
9 me just identify them, one, McCauley was acting as an agent of
02:26PM 10 CPLC at the 1908 tax sale; two, the Josiah Haines warrant was
11 seated in character at the time of the 1907 assessment; three,
12 CPLC properly reported its surface only unseated interest
13 pursuant to the Act of 1806; and four, that CPLC's default on
14 the 1907 taxes was intentional.

02:27PM 15 We made no such definitive factual findings. I
16 simply construed the record facts in a light most favorable to
17 nonmovant, the Proctor Trust, as required by Rule 56 and
18 applied that version of facts to the law. That's not to say
19 there isn't record evidence of some of those findings, but a
02:27PM 20 final determination on factual issues is necessary for the
21 resolution of this case.

22 When they're in dispute they're obviously reserved
23 for a jury, so please keep that in mind. And I hope that it
24 was clear why we consistently qualified our conclusions on
02:28PM 25 these issues with Rule 56 language or explained that certain

1 findings were either assumed for argument's sake or considered
2 in the alternative, but the way the presentations were made in
3 advance of this oral argument it led me to believe that there
4 may have been some misconceptions about what specifically we
02:28PM 5 determined in our December 2019 opinion. So I wanted that to
6 be very clear to both parties. All right, is there anything
7 else that the parties would like me to hear on the record
8 before we close the record?

9 MR. STOCKMAN: Your Honor, this is Paul Stockman.

02:28PM 10 Nothing else from the Trust. I apologize if we overstated the
11 court's conclusions. It's human nature, you read sometimes
12 what you want to read, and given that we believed, you know,
13 in the presence of cross motions that judgment was supportable
14 in our favor, I think we probably were wearing our rose colored
02:29PM 15 glasses a bit, but we understand your position and what you
16 said.

17 THE COURT: All right. Very good.

18 MR. BECHTEL: This is Brad Bechtel. I have nothing
19 further. Thank you.

02:29PM 20 THE COURT: All right. Thank you. Let's move off the
21 record to determine when the transcript may be made available
22 to the parties.

23 (Hearing concluded at 2:30 p.m.)
24
25

CERTIFICATE OF OFFICIAL COURT REPORTER

Commonwealth of PA, PA Game Commission vs. Thomas Proctor

1:12-CV-01567-CCC

Oral Argument Teleconference

1 April 2020

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 3rd day of April 2018

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter